

CONTENTS

CHAPTER 351. REDUCTION IN FORCE

PARAGRAPH	PAGE
1. Scope	1
2. Policy	1
3. Responsibilities.....	1
4. Filling Vacancies.....	2
5. Delegations of Authority.....	2
6. Competitive Areas	4
7. Competitive Levels and Retention Standing	5
8. Assignment Rights.....	6
9. Employee Notices.....	7
10. Furloughs	7
11. Transfer of Function	9
12. Placement Assistance.....	9
13. Appeals and Grievances	11

CHAPTER 351. REDUCTION IN FORCE

(TO BE USED WITH 5 CFR 351)

1. SCOPE

This chapter contains Department of Veterans Affairs (VA) policies and procedures for reductions in force, transfers of function, and furloughs. They apply to all employees not serving in the Senior Executive Service or appointed under 38 U.S.C. 7306, 7401(1), 7405, or 7406 authorities. Employees, such as Licensed Physical Therapists and Licensed Practical/Vocational Nurses, appointed under 38 U.S.C. 7401(3) are covered by this chapter. Since this chapter supplements 5 CFR 351, the two issues must be used together when planning and effecting covered actions. Applicable master or local negotiated agreement provisions also must be used in administering actions affecting bargaining unit employees. Labor organizations will be notified after a decision to take reduction-in-force action is made and before any affected bargaining unit employees are notified.

2. POLICY

VA will not use reduction-in-force procedures to accomplish staffing adjustments and reductions which properly can be made through other means. To the maximum extent possible and consistent with sound management practices, such adjustments and reductions will be effected through orderly attrition and through other carefully planned measures designed to avoid or minimize the impact of reduction in force on employees. However, when necessary, VA will follow the established reduction-in-force procedures to assure that employees are identified for release from competitive levels in a uniform and consistent method.

3. RESPONSIBILITIES

a. Line Management

(1) Managers are responsible for utilizing human resources effectively and economically. When plans are made for organizational, functional, work load, and other changes which may affect employees, thorough consideration will be given to means other than reduction in force for accomplishing the adjustments. To the extent possible and compatible with sound management practices, alternative measures such as the imposition of employment restrictions, temporary appointments and promotions, reassignments to continuing vacancies, training, qualification modifications and waivers, intra-agency transfers, and voluntary early and discontinued service retirements will be used to avoid or minimize the adverse effect of reduction-in-force actions.

(2) Management officials will seek the assistance of Human Resources Management officials in the earliest planning stages of staffing adjustments to assure that these alternatives are explored when they can be used to the maximum benefit of the Department and its employees.

b. Human Resources Management Officials

(1) The Deputy Assistant Secretary for Human Resources Management is responsible for formulating and evaluating reduction-in-force policies, providing reduction-in-force management advisory services, and developing and coordinating programs for placing employees whose positions are surplus.

(2) Human Resources Management Officers will assist management officials in planning actions which have staffing adjustment or reduction-in-force implications. They also are responsible for administering reductions in force in organizations which they service.

4. FILLING VACANCIES

a. Reduction-in-Force Planning

(1) Although management is not obligated to fill vacancies in a reduction in force, to the extent possible, necessary and continuing vacancies will be used to provide placement opportunities for employees who will be adversely impacted by reduction in force. When management chooses to offer vacancies, qualifications may be waived in accordance with 5 CFR 351.703.

(2) After a reorganization is announced in writing, eligible employees may be offered lower-graded positions. Employees offered such positions will be granted grade and pay retention if eligible. (See 5 CFR 536, and MP-5, part I, chapter 536, for guidance on grade and pay retention eligibility.)

(3) Promotions or other placements into vacant positions which have greater promotion potential than employees' current positions must be made under competitive merit promotion procedures.

b. Offering Vacancies to Employees

(1) During a reduction in force, to the extent possible, vacancies may be used to satisfy employees' assignment rights in accordance with 5 CFR 351.201.

(2) Employees without assignment rights who have received specific reduction-in-force separation notices may be offered vacant, lower-grade positions without regard to the three-grade level limit which applies to bump and retreat. Eligible employees who voluntarily accept lower-graded positions will be entitled to grade and pay retention benefits.

5. DELEGATIONS OF AUTHORITY

a. Approving Officials

(1) The secretary, or designee(s), will approve reduction-in-force actions involving positions centralized to the Secretary and all furloughs.

(2) Administration Heads, Assistant Secretaries, General Counsel, Inspector General, Chairman, Board of Veterans' Appeals, Chairman, Board of Contract Appeals, or their designee(s), with the advice and assistance of the Office of Human Resources Management, will approve all other actions within Central Office elements under their jurisdiction, and within field facilities under the jurisdiction requiring Central Office approval.

(3) Field facility directors will approve all reduction-in-force actions within their respective jurisdictions unless the action involves a centralized position or separating an employee without an assignment offer.

b. **Reduction in Force.** Field facility Directors will submit a request, through channels and the Office of Human Resources Management (051), to the appropriate official listed above before proceeding with reductions in force that involve a centralized position or separating an employee without an assignment offer. The request will include the following information:

(1) The reason(s), among those in 5 CFR 351.201(a)(2), for the action;

(2) The names, retention groups and subgroups, and retention dates of all affected employees;

(3) The titles, series, grades, numbers, and competitive levels of all involved positions;

(4) A list or chart of all proposed assignments and displacements; and

(5) If the reduction in force occurs in a research project, the name of the project and principal investigator.

c. **Transfer of Function.** Field facility Directors will submit a request, through channels and the Office of Human Resources Management (051), to the appropriate official listed above before they separate or include in a concurrent reduction in force employees who decline to transfer with their functions. The request will include the information in paragraphs 5b(2), (3), and (5) above.

d. **Furlough.** Administration Heads, Assistant Secretaries, General Counsel, Inspector General, Chairman, Board of Veterans' Appeals, Chairman, Board of Contract Appeals and field facility Directors will submit a request, through channels and the Office of Human Resources Management (051), to the Secretary before proceeding with a furlough, whether under adverse action or reduction-in-force procedures. The request will include a description of the temporary conditions warranting a furlough, the information in paragraph 5b(2) and (3) above, the proposed length of the furlough, including the beginning and ending dates, and any alternatives to furloughs that were considered. Requests for adverse action furloughs also will identify the method used to select employees for furlough.

e. **Voluntary Early Retirement Authority.** Administration Heads, Assistant Secretaries, General Counsel, Inspector General, Chairman, Board of Veterans' Appeals, Chairman, Board of Contract Appeals and field facility Directors will submit a request, through channels, to the Office of Human Resources Management (051). The request must meet the criteria and include the

information required by the Office of Personnel Management (OPM). The Deputy Assistant Secretary for Human Resources Management is authorized to submit such request to the OPM.

6. COMPETITIVE AREAS

a. Standard Competitive Areas

(1) Field Positions

(a) Normally, each VA facility under separate managerial authority, e.g., medical center, independent outpatient clinic, regional office, cemetery, and data processing center and its satellite positions and activities within the commuting area, constitutes a competitive area.

(b) Satellite positions and activities outside the commuting area of their parent facilities, e.g., Veteran Representatives on campus, satellite outpatient clinics, "vet centers," also constitute separate competitive areas for each commuting area.

(c) When two or more installations in the same administration or staff office in a local commuting area have a single organizational unit which provides "common service" functions, such as Human Resources, finance, or supply, the servicing office is included in the competitive area of the installation that has administrative authority over the servicing office.

(d) A field element of an administration or staff office which is located at and serviced by a VA facility, but under separate managerial and appointing authority, constitutes a separate competitive area. Examples include District Counsel offices at regional offices and medical centers and Veterans Benefits Administration activities at data processing centers.

(e) Positions in the field for which employment matters are centralized to Central Office, such as service and division chiefs, are included in the competitive area of the local facility.

(2) Central Office Positions

(a) The Office of the Secretary, each office of an Administration Head, Assistant Secretary, and the General Counsel, Inspector General, Chairman, Board of Veterans' Appeals, Chairman, Board of Contract Appeals constitute separate competitive areas.

(b) Central Office employees with a duty station outside of the Washington, DC, metropolitan area, such as information specialists in the Office of Public Affairs and resident engineers in the Office of Facilities, are in separate competitive areas for each administration or staff office and each commuting area. They are not included in the Washington, DC, competitive areas or in any other competitive areas in their commuting areas.

(c) Positions in the Office of Inspector General (OIG) may not be placed in the same competitive area as positions outside the OIG.

b. **Authority to Redefine Competitive Areas.** Administration Heads, Assistant Secretaries, General Counsel, Inspector General, Chairman, Board of Veterans' Appeals, Chairman, Board of Contract Appeals with the advice and assistance of the Office of Human Resources Management, may redefine competitive areas for organizations under their jurisdictions, provided such redefinitions are fully justified and documented to ensure that such action is clearly in the best interest of VA.

7. COMPETITIVE LEVELS AND RETENTION STANDING

a. **Establishment of Competitive Levels.** Human Resources Management Officers are responsible for establishing competitive levels and maintaining the required records. Records will be maintained for at least two years after the completion of the reduction-in-force action(s).

b. Credit for Performance.

(1) Guidance on processing annual performance ratings of record used for reduction-in-force purposes is contained in MP-5, part I, chapter 430, "Performance Management System."

(2) The cutoff date for performance ratings of record will be the date of the specific reduction-in-force notice.

c. **Order of Release from Competitive Levels.** No competing employee will be released from a competitive level while retaining in that level an employee with a specifically limited temporary appointment, a specifically limited temporary or term promotion, or a written decision of a performance-based removal or demotion from the competitive level. Once such employees have been released, competing employees will be released in inverse order of retention standing except as provided in subparagraphs 7d and 7e below.

d. **Ties.** As permitted by 5 CFR 351.601(b), the operating official who would normally make the selection for the position being filled will determine, on the basis of qualifications for the specific position, which employee(s) will be retained when two or more employees on a retention register are tied. Employees who will not be retained will be notified in writing of the tie and the decision that they will not be retained.

e. Exceptions to Retention Order

(1) Holders of the Congressional Medal of Honor employed as Contact Representatives (Veterans Benefits Counselors) under authority of Executive Order 9628 are exempted from reduction in force.

(2) An employee who is being assigned to a position which will not be vacated until after the end of the 60-day notice period may be retained in his/her current position until the position becomes available but not to exceed 60 additional calendar days.

(3) As permitted in 5 CFR 351.608, employees who have been reached for reduction in force (separation) will be retained as a temporary exception to the retention order under the following conditions:

(a) An employee whose disability retirement has been approved by OPM will be separated when the person's earned sick leave is exhausted or on the date OPM approval is received, whichever is later.

(b) An employee who applies for disability retirement (or for whom VA has made such application) will be granted sick leave provided the responsible VA official agrees, on the basis of acceptable medical evidence, that the employee is incapacitated for duty in his/her present position. If OPM disapproves the request for disability retirement, the employee will be separated on the day VA is notified of the disapproval or on the scheduled effective date of the reduction in force, whichever is later. If OPM has not approved or disapproved the application for disability retirement by the time the employee's earned sick leave has been exhausted, the employee will be separated at that time or on the scheduled effective date of the reduction in force, whichever is later.

(4) Field facility Directors may approve temporary exceptions in the normal retention order for employees under their jurisdiction in other cases involving sickness or disability. The Secretary, Administration Heads, Assistant Secretaries, General Counsel, Inspector General, Chairman, Board of Veterans' Appeals, Chairman, Board of Contract Appeals, or their designee(s), may approve such exceptions for Central Office employees and for employees located at field facilities who are not under the managerial authority of a field facility Director.

(5) These officials are also authorized to approve temporary exceptions in the normal retention order for 90 days or less to continue an activity without undue interruption as described in 5 CFR 351.203. "Undue interruption" does not mean mere inconvenience. Serious inconvenience and even severe interruption of the work program are often the unavoidable results of reduction in force. A work program probably would be unduly interrupted if an employee needed more than 90 days after the reduction in force to successfully perform the critical elements of a position. Lower priority programs might tolerate a longer interruption.

(6) If an exception is approved in one case in a particular reduction in force, it must be applied to all other employees reached for separation in that reduction in force who meet the same criteria.

8. ASSIGNMENT RIGHTS

a. **Qualification Determinations.** Human Resources Management Officers determine whether employees are qualified for specific positions to which they can be assigned in reduction in force. Qualification requirements may be waived to the extent permitted by 5 CFR 351.703, when filling a vacant position during a reduction in force. Such waivers are not permitted for reduction-in-force displacements.

b. **Administrative Assignments.** The following administrative assignment rights are granted to affected VA employees:

(1) **Other Competitive Areas.** Group III employees in other competitive areas in the local commuting area will be displaced to provide assignment opportunities for VA employees who (a) are in Group I or Group II; (b) have received a notice of impending reduction-in-force separation or who have declined an offer to transfer with their current competitive area; and (c) meet the qualification standards and are available for positions held by Group III employees at grade levels not higher than the grade levels held at the time of receipt of reduction-in-force notices.

(2) **Attorneys.** Attorneys appointed under Schedule A, Section 213.3102(d) who are reached for release from their competitive area which are encumbered by Schedule A, Section 213.3102(d) appointees whom they can displace by "bump" or "retreat."

(3) **Employees Appointed under 38 U.S.C. 7401(3).** Employees appointed under 38 U.S.C. 7401(3) who are reached for release from their competitive levels are entitled to other positions in the same competitive area which are encumbered by 38 U.S.C. 7401(3) appointees whom they can displace by "bump" or "retreat."

(4) **Veterans Canteen Service Employees.** Employees of the Veterans Canteen Service appointed under 38 U.S.C. 7802 who are reached for release from their competitive levels are entitled to other positions in the same competitive area which are encumbered by 38 U.S.C. 7802 appointees whom they can displace by "bump" or "retreat."

9. EMPLOYEE NOTICES

a. **General.** Employees will be given advance official information concerning decisions which may result in their being affected by reduction in force. This information will be written and will include the reasons for the required adjustments, such as lack of work or funds, reorganization, or a realignment of functions, the competitive area, where the employee may inspect the pertinent regulations, and who to contact about assistance available for affected employees.

b. **Specific Notices.** Whether or not other notices are used, each affected employee must be given a specific notice of the proposed action. Notice periods and contents are described in CFR Part 351.

10. FURLOUGHS

a. Furloughs are appropriate to address temporary conditions when it is intended to recall employees to duty.

b. Furloughs of 30 days (22 workdays) or less are adverse actions and should be processed in accordance with MP-5, part I, chapter 752. The guidance in this chapter on requests for furlough authority, appropriate uses of furlough, and identification of employees for furloughs will apply to these actions.

c. Reduction-in-force procedures must be followed to furlough an employee for more than 30 consecutive days (or more than 22 workdays if done on a discontinuous basis).

d. The determination as to which employees are furloughed will be based on an assessment of which assignments are critical to the continuing operation of the organization during the furlough.

e. When feasible, furloughs will be spread out among employees in affected competitive levels to minimize the impact on each employee and the disruption of VA activities. All employees shall be accorded fair and equitable treatment consistent with this policy.

f. Ordinarily, employees will be given 30 or 60 calendar days advance written notice of a furlough depending on the length of furlough. However, employees may be furloughed during emergencies without the usual advance notice and opportunity to reply. Emergency situations are restricted to very narrow circumstances such as furloughs to avoid violating the Anti-deficiency Act, which prohibits using funds when appropriations have not been enacted. (See *Horner v. Andrzejewski*, U.S. Court of Appeals for the Federal Circuit, Appeal No. 86-644, date January 29, 1987.)

g. The written notice shall advise the employee of:

(1) The reason(s) for the furlough;

(2) The effective date(s) and expected duration of the furlough;

(3) If applicable, the circumstances which warrant waiver of the notice period;

(4) When only some of the employees in an organizational unit are to be furloughed, the basis for identifying the employees to be furloughed;

(5) The place where the employee may inspect the applicable regulations and records;

(6) The employee's right to reply in writing and time allowed for reply;

(7) The employee's right to grieve or appeal, as appropriate; and

(8) Any effects of the furlough on the employee's entitlement to retirement, life and health insurance, and other benefits.

h. For furloughs of 30 days or less, management will consider employee preference, i.e., to work a shorter prorated week or to be furloughed for a certain number of consecutive days, in scheduling the furlough.

i. Competing employees may not be furloughed for more than one year. If employees must be released for more than one year, reduction-in-force procedures must be used.

11. TRANSFER OF FUNCTION

a. **General.** When the number of employees who are willing to transfer and who are in a competitive level within a transferring function exceeds the needs of the gaining competitive area and reduction-in-force procedures are used to relieve the surplus, these procedures will normally be applied at the gaining location. Any use of reduction-in-force procedures in the losing competitive area (except for actions unrelated to the transfer of function) will require the prior authorization of the appropriate Administration Heads, Assistant Secretaries, General Counsel, Inspector General, Chairman, Board of Veterans' Appeals, Chairman, Board of Contract Appeals.

NOTE: When a transfer of function occurs which does not involve a reduction in the total number of positions or a reduction of positions in a competitive level, reduction-in-force procedures do not apply. Procedures in 5 CFR 752 are applicable.

b. Procedures

(1) For planning purposes, employees occupying positions in a transferring function will be asked in writing if they are interested in transferring, and will be given a reasonable period of time to respond.

(2) If a reduction in force is necessary at the gaining facility as a result of the transfer of function, employees occupying positions in the transferring function will be considered to be employees of the receiving organization and will be placed in appropriate consolidated competitive levels. They will not be physically moved to the new commuting area until a specific assignment is determined.

(3) Normally, appropriate notices will be issued by the losing facility and will include information on specific assignments, pay and grade retention, and payment for travel and transportation costs. If there is a reduction in force involved in the transfer of function, the gaining facility will issue the notices. Separation actions that may result will be processed by the losing facility.

(4) Career or career-conditional employees who are separated are eligible for placement assistance under the programs described in 5 CFR 330. Also, those meeting the requirements will be entered on the reemployment priority lists in the commuting area of the office which issued the notice resulting in the separation.

12. PLACEMENT ASSISTANCE

a. Employment Restrictions

(1) Administration Heads, Assistant Secretaries, General Counsel, Inspector General, Chairman, Board of Veterans' Appeals, Chairman, Board of Contract Appeals will determine, with the advice and assistance of the Deputy Assistant Secretary for Human Resources Management, whether employment restrictions should be imposed on other facilities or areas to provide placement opportunities for employees likely to be affected adversely by reduction in

force, transfer of function, or other reorganizations. If it is determined that employment restrictions across organizational lines are needed to provide sufficient placement assistance opportunities, the Administration Heads, Assistant Secretaries, General Counsel, Inspector General, Chairman, Board of Veterans' Appeals, Chairman, Board of Contract Appeals of the potentially affected facility or organization or the Secretary will approve the extension of employment restrictions.

(2) Efforts should be made to identify the specific grades and series of positions for which affected employees qualify, and to apply employment restrictions only to those specific vacancies.

b. Placement Consideration

(1) Reemployment Priority List. Where there is more than one VA Human Resources office in a commuting area, the Human Resources Management Officers will establish local procedures for exchange of information and the maintenance of a consolidated reemployment priority list (RPL). When filling vacancies, RPL registrants must be considered in accordance with applicable procedures in 5 CFR 330, Subpart B, before candidates from outside the station. If the selecting official tentatively non-selects appropriately referred RPL registrants, that official must obtain approval of the next higher level supervisor before considering candidates from outside the station. A decision to non-select will be based on merit factors, i.e., factors other than prohibited personnel practices.

(2) Transfers within VA. Group I and II employees who cannot be offered jobs at their facilities will be given full consideration for vacancies at other VA facilities for which they apply and are qualified. Human Resources Management Officers will transmit employees' applications with a special notation that employees be considered in accordance with this paragraph. The receiving facility will usually transfer an employee during the notice period. As a general policy, such transfers will be considered advantageous to VA and travel and transportation expenses will be authorized according to applicable regulations. Generally, the employee should transfer to that station requiring the minimum travel and transportation costs. Although this is not mandatory, failure to do so may be a valid basis for denying or limiting the travel and transportation expenses authorized. Refusal of a reasonable offer of placement will terminate further priority placement consideration.

(3) Career Transition Assistance Plan. VA Directive 5330 and Handbook 5330, provide authority, guidance and procedures for providing transition assistance services and special selection priority for identified displaced and surplus employees when filling vacancies under the VA CTAP.

c. Placement Activities

(1) VA organizations undergoing staff reductions or adjustments in which a number of employees will be subject to separation will implement employee assistance, counseling, and placement programs for potentially displaced employees. Such services will include providing information and source materials on reduction in force, employment opportunities in other agencies, State and local government, and the private sector, and materials on career change,

application preparation, job-seeking techniques, and appropriate information regarding application for unemployment benefits. See VA Career Transition Plan, Directive 5330, and Handbook 5330.

(2) The Interagency Career Transition Assistance Plan for Displaced Employees described in 5 CFR 330, Subpart G, provides opportunities for eligible employees to be referred to other Federal agencies for employment consideration.

13. APPEALS AND GRIEVANCES

a. **Employee Grievance.** When an employee grieves a reduction-in-force action under a negotiated grievance procedure, the field facility shall promptly notify the Deputy Assistant Secretary for Human Resources Management (051). Upon request, the field facility shall also forward a copy of the grievance and related documents and management responses.

b. **Employee Appeals to the Merit Systems Protection Board.** When a Regional Office of the Merit Systems Protection Board (MSPB) notifies a facility that an employee is appealing his/her reduction-in-force action, the facility will immediately advise the Deputy Assistant Secretary for Human Resources Management (051). Duplicates of the material submitted by the facility to the Board also will be sent.

c. **Petitions for Review by the Merit Systems Protection Board.** An employee, the Department, or the Director of OPM may file a petition for review of a MSPB Regional Office decision with the MSPB. Department petitions for review will be coordinated and submitted by the Deputy Assistant Secretary for Human Resources Management (051). Field facilities will expedite transmission of MSPB Regional Office decisions to that office to assure that Department petitions, if appropriate, are submitted on a timely basis.